

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 01, 2024

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DAVID STANLEY,

Plaintiff,

v.

OREGON MUTUAL INSURANCE
COMPANY,

Defendant.

No. 2:24-CV-00036-MKD

STIPULATED PROTECTIVE
ORDER

ECF No. 11

Before the Court is the Parties' Stipulated Protective Order. ECF No. 11.

The parties requested the entry of a stipulated protective order. The Court has reviewed the record and finds good cause to enter the proposed order.

Accordingly, **IT IS HEREBY ORDERED:**

1. The parties' Stipulated Protective Order, **ECF No. 11**, is **GRANTED**.
2. The following Protective Order shall apply to this case:

PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted.

Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

Defendants claim that certain materials are “confidential.” This material may include the following documents and tangible things produced or otherwise exchanged:

1. Policies, procedures, training manuals and materials and related documents describing policies and procedures for handling certain types of claims; and

2. Confidential information related to individual Oregon Mutual employees if relevant to the instant litigation and if ordered produced.

3. SCOPE

1 The protections conferred by this agreement cover not only claimed
2 confidential material (as defined above), but also (1) any information copied or
3 extracted from confidential material; (2) all copies, excerpts, summaries, or
4 compilations of confidential material; and (3) any testimony, conversations, or
5 presentations by parties or their counsel that might reveal claimed confidential
6 material.

7 However, the protections conferred by this agreement do not cover
8 information that is in the public domain or becomes part of the public domain
9 through trial or otherwise.

10 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

11 4.1 Basic Principles. A receiving party may use confidential
12 material that is disclosed or produced by another party or by a non-party in
13 connection with this case only for prosecuting, defending, or attempting to
14 settle this litigation. Confidential material may be disclosed only to the
15 categories of persons and under the conditions described in this agreement.
16 Confidential material must be stored and maintained by a receiving party at
17 a location and in a secure manner that ensures that access is limited to the
18 persons authorized under this agreement.

19 4.2 Disclosure of “CONFIDENTIAL” Information or Items.

20 Unless otherwise ordered by the court or permitted in writing by the

1 designating party, a receiving party may disclose any confidential material
2 only to:

3 (a) the receiving party's counsel of record in this action, as
4 well as employees of counsel to whom it is reasonably necessary to
5 disclose the information for this litigation;

6 (b) the officers, directors, and employees (including in house
7 counsel) of the receiving party to whom disclosure is reasonably
8 necessary for this litigation and who have signed the
9 "Acknowledgment and Agreement to Be Bound (Exhibit A);

10 (c) experts and consultants to whom disclosure is reasonably
11 necessary for this litigation;

12 (d) the court, court personnel, and court reporters and their
13 staff;

14 (e) copy or imaging services retained by counsel to assist in
15 the duplication of confidential material, provided that counsel for the
16 party retaining the copy or imaging service instructs the service not to
17 disclose any material designated as confidential to third parties and to
18 immediately return all originals and copies of any confidential
19 material;
20

1 (f) during their depositions, witnesses in the action to whom
2 disclosure is reasonably necessary and who have signed the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
4 otherwise agreed by the designating party or ordered by the court.
5 Pages of transcribed deposition testimony or exhibits to depositions
6 that reveal material designated as confidential must be separately
7 bound by the court reporter and may not be disclosed to anyone
8 except as permitted under this agreement;

9 (g) the author or recipient of a document containing the
10 information or a custodian or other person who otherwise possessed or
11 knew the information.

12 4.3 Filing Confidential Material. Before filing material designated
13 as confidential or discussing or referencing such material in court filings, the
14 filing party shall confer with the designating party to determine whether the
15 designating party will remove the confidential designation, whether the
16 document can be redacted, or whether a motion to seal or stipulation and
17 proposed order is warranted. During the meet and confer process, the
18 designating party must identify the basis for sealing the specific confidential
19 information at issue, and the filing party shall include this basis in its motion
20 to seal, along with any objection to sealing the information at issue.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for
3 Protection. Each party or non-party that designates information or items for
4 protection under this agreement must take care to limit any such designation
5 to specific material that qualifies under the appropriate standards. The
6 designating party must designate for protection only those parts of material,
7 documents, items, or oral or written communications that qualify, so that
8 other portions of the material, documents, items, or communications for
9 which protection is not warranted are not swept unjustifiably within the
10 ambit of this agreement.

11 Mass, indiscriminate, or routinized designations are prohibited.
12 Designations that are shown to be clearly unjustified or that have been made
13 for an improper purpose (e.g., to unnecessarily encumber or delay the case
14 development process or to impose unnecessary expenses and burdens on
15 other parties) expose the designating party to sanctions.

16 If it comes to a designating party's attention that information or items
17 that it designated for protection do not qualify for protection, the designating
18 party must promptly notify all other parties that it is withdrawing the
19 mistaken designation.
20

1 5.2 Manner and Timing of Designations. Except as otherwise
2 provided in this agreement (see, e.g., second paragraph of section 5.2(b)
3 below), or as otherwise stipulated or ordered, disclosure or discovery
4 material that qualifies for protection under this agreement must be clearly so
5 designated before or when the material is disclosed or produced.

6 (a) Information in documentary form: (e.g., paper or
7 electronic documents and deposition exhibits, but excluding
8 transcripts of depositions or other pretrial or trial proceedings), the
9 designating party must affix the word “CONFIDENTIAL” to each
10 page that contains confidential material. If only a portion or portions
11 of the material on a page qualifies for protection, the producing party
12 also must clearly identify the protected portion(s) (e.g., by making
13 appropriate markings in the margins).

14 (b) Testimony given in deposition or in other pretrial
15 proceedings: the parties and any participating non-parties must
16 identify on the record, during the deposition, hearing, or other pretrial
17 proceeding, all protected testimony, without prejudice to their right to
18 so designate other testimony after reviewing the transcript. Any party
19 or non-party may, within fifteen days after receiving the transcript of
20 the deposition or other pretrial proceeding, designate portions of the

1 transcript, or exhibits thereto, as confidential. If a party or non-party
2 desires to protect confidential information at trial, the issue should be
3 addressed during the pre-trial conference.

4 (c) Other tangible items: the producing party must affix in a
5 prominent place on the exterior of the container or containers in which
6 the information or item is stored the word “CONFIDENTIAL.” If
7 only a portion or portions of the information or item warrant
8 protection, the producing party, to the extent practicable, shall identify
9 the protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an
11 inadvertent failure to designate qualified information or items does not,
12 standing alone, waive the designating party’s right to secure protection under
13 this agreement for such material. Upon timely correction of a designation,
14 the receiving party must make reasonable efforts to ensure that the material
15 is treated in accordance with the provisions of this agreement.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any party or non-party may challenge a
18 designation of confidentiality at any time. Unless a prompt challenge to a
19 designating party’s confidentiality designation is necessary to avoid
20 foreseeable, substantial unfairness, unnecessary economic burdens, or a

1 significant disruption or delay of the litigation, a party does not waive its
2 right to challenge a confidentiality designation by electing not to mount a
3 challenge promptly after the original designation is disclosed.

4 6.2 Meet and Confer. The parties must attempt to resolve any
5 dispute regarding confidential designations without court involvement. Any
6 motion regarding confidential designations or for a protective order must
7 include a certification, in the motion or in a declaration or affidavit, that the
8 movant has engaged in a good faith meet and confer conference with other
9 affected parties in an effort to resolve the dispute without court action. The
10 certification must list the date, manner, and participants to the conference. A
11 good faith effort to confer requires a face-to-face meeting or a telephone
12 conference.

13 6.3 Judicial Intervention. If the parties cannot resolve a challenge
14 without court intervention, the designating party may file and serve a motion
15 to retain confidentiality. The burden of persuasion in any such motion shall
16 be on the designating party. Frivolous challenges, and those made for an
17 improper purpose (e.g., to harass or impose unnecessary expenses and
18 burdens on other parties) may expose the challenging party to sanctions. All
19 parties shall continue to maintain the material in question as confidential
20 until the court rules on the challenge. If more than ten days pass after the

1 parties have met and conferred in good faith with no motion filed, the
2 confidential designation conferred by this agreement is waived with regard
3 to the specific documents about which the parties have met and conferred.
4 This ten-day period may be extended by agreement of the parties.

5 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
6 PRODUCED IN OTHER LITIGATION

7 If a party is served with a subpoena or a court order issued in other litigation
8 that compels disclosure of any information or items designated in this action as
9 “CONFIDENTIAL,” that party must:

10 (a) promptly notify the designating party in writing and include a
11 copy of the subpoena or court order;

12 (b) promptly notify in writing the party who caused the subpoena
13 or order to issue in the other litigation that some or all of the material
14 covered by the subpoena or order is subject to this agreement. Such
15 notification shall include a copy of this agreement; and

16 (c) cooperate with respect to all reasonable procedures sought to be
17 pursued by the designating party whose confidential material may be
18 affected.

19 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

20 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
confidential material to any person or in any circumstance not authorized under

1 this agreement, the receiving party must immediately (a) notify in writing the
2 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
3 all unauthorized copies of the protected material, (c) inform the person or persons
4 to whom unauthorized disclosures were made of all the terms of this agreement.

5 9. INADVERTENT PRODUCTION OF PRIVILEGED OR
6 OTHERWISE PROTECTED MATERIAL

7 When a producing party gives notice to receiving parties that certain
8 inadvertently produced material is subject to a claim of privilege or other
9 protection, the obligations of the receiving parties are those set forth in Federal
10 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
11 whatever procedure may be established in an e-discovery order or agreement that
12 provides for production without prior privilege review. The parties agree to the
13 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

14 10. NON TERMINATION AND RETURN OF DOCUMENTS

15 Within 60 days after the termination of this action, including all appeals,
16 each receiving party must return all material that retains its confidential
17 designation to the producing party, including all copies, extracts and summaries
18 thereof. Alternatively, the parties may agree upon appropriate methods of
19 destruction.

20 Notwithstanding this provision, counsel are entitled to retain one archival
copy of all documents filed with the court, trial, deposition, and hearing transcripts,

1 correspondence, deposition and trial exhibits, expert reports, attorney work
2 product, and consultant and expert work product, even if such materials contain
3 confidential material.

4 The confidentiality obligations imposed by this agreement shall remain in
5 effect until a designating party agrees otherwise in writing or a court orders
6 otherwise.

7 **IT IS FURTHER ORDERED** that pursuant to Fed. R. Evid. 502(d), the
8 production of any documents in this proceeding shall not, for the purposes of this
9 proceeding or any other federal or state proceeding, constitute a waiver by the
10 producing party of any privilege applicable to those documents, including the
11 attorney-client privilege, attorney work-product protection, or any other privilege
12 or protection recognized by law.

13 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
14 Order and provide copies to the parties.

15 DATED July 1, 2024.

16 *s/Mary K. Dimke*
17 MARY K. DIMKE
18 UNITED STATES DISTRICT JUDGE
19
20

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name] of
_____ [print or type full address], declare under
penalty of perjury that I have read in its entirety and understand the Stipulated
Protective Order that was issued by the United States District Court for the Eastern
District of Washington on _____, 2024, in the case of *Stanley v.*
Oregon Mutual Insurance Company, No. 2:24-CV-00036-MKD. I agree to
comply with and to be bound by all the terms of this Stipulated Protective Order
and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated
Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Eastern District of Washington for the purpose of enforcing the terms
of this Stipulated Protective Order, even if such enforcement proceedings occur
after termination of this action.

DATED this _____ day of _____, 2024, at _____.
(City and State)

Signature

Print name